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**Pontiac Nursing Home, LLC and 1199 New York's Health and Human Service Union, SEIU, AFL-CIO, CLC.**<sup>1</sup> Case 3-CA-25111

February 28, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and first amended charge filed on October 18 and November 15, 2004, respectively, the General Counsel issued the amended complaint on December 7, 2004, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 3-RC-11422. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the amended complaint.

On December 27, 2004, the General Counsel filed a Motion for Summary Judgment. On January 6, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information that is alleged to be relevant and necessary to the Union's role as bargaining representative, but contests the validity of the certification based on its objection to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any

representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no genuine issues of material fact warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the following information from the Respondent by letter dated September 28, 2004:

1. A list of all bargaining unit members by work unit/department and seniority including:
  - a. name;
  - b. address;
  - c. phone number;
  - d. job classification;
  - e. work unit/department;
  - f. date of hire;
  - g. occupational seniority;
  - h. wage rate;
  - i. full-time, part-time or per diem status (with respect to part-timers, the pro-rata formula or number of hours worked weekly); and
  - j. shift.
2. Total payroll for bargaining unit members for the last complete fiscal year.
3. Average weighted hourly wage rate for the bargaining unit.
4. Percentage paid by the Respondent for roll-up cost for bargaining unit members.
5. Total number of straight-time hours paid for the last complete fiscal year.
6. Total number of overtime hours paid for the last complete fiscal year.
7. Total amount paid for shift differential in the last complete fiscal year.
8. A list of health insurance plans available to bargaining unit members and a copy of each plan summary along with the following information:
  - a. number of bargaining unit members currently covered by each plan, specifying individual or family coverage;
  - b. current total monthly premium cost for each plan;
  - c. current monthly amount paid for by the Respondent;
  - d. current monthly amount paid for by the bargaining unit member; and

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<sup>1</sup> The name of the Charging Party is corrected as set forth in item 1 of the General Counsel's motion.

e. expected premium cost increase for the next relevant (fiscal or calendar) year.

9. A list of dental insurance plans available to bargaining unit members and a copy of each plan summary along with the following information:

a. number of bargaining unit members currently covered by each plan (identify individual or family coverage);

b. current total monthly premium cost for each plan;

c. current monthly amount paid for by the Respondent;

d. current monthly amount paid for by the bargaining unit member; and

e. expected premium cost increase for the next relevant (fiscal or calendar) year.

10. Total amount paid for life insurance for bargaining unit members in the last complete fiscal year along with a copy of the plan summary and a list of names of those members covered.

11. Total amount paid for educational assistance for bargaining unit members in the last complete fiscal year along with a list of names of those members provided such assistance.

12. Total number of times in the last complete fiscal year that bargaining unit members were forced or "mandated" to work overtime, by shift.

13. A copy of the job description for each job covered by the collective bargaining agreement.

14. Summary plan description of the pension plan along with copies of the Form 5500 for the latest pension plan year of the tax-qualified pension plan.

Although the Respondent's answer denies that the information requested is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that all of the foregoing types of information are presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>2</sup> See, e.g., *Cheboygan Health Care Center*, supra, and cases cited therein. The Respondent has not asserted any basis for rebutting the presumptive relevance of the information, apart from its contention, rejected above, that the Union's certification is invalid.

<sup>2</sup> The Union requested two types of information in its September 28, 2004 letter: "Bargaining Unit Information" and "Facility Information." The refusal-to-furnish-information allegation of the amended complaint is expressly limited to the information classified by the Union as "Bargaining Unit Information." The requested "Bargaining Unit Information," which is listed above, relates solely to unit employees.

Accordingly, we grant the Motion for Summary Judgment,<sup>3</sup> and will order the Respondent to bargain and to furnish the requested information to the Union.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business located in Oswego, New York (the Respondent's Oswego, New York facility), has been engaged in the operation of a nursing home.

Annually, the Respondent, in conducting its business operations described above, derives gross revenues in excess of \$100,000 and purchases and receives at its Oswego, New York facility goods and materials valued in excess of \$5000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following the election held on April 15, 2004, the Union was certified on September 17, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time licensed practical nurses, graduate practical nurses, certified nurse assistants, recreation aides, unit clerks, receptionists, unit aides, bakers, dietary aides, cooks, maintenance/grounds employees, housekeepers and laundry employees employed by the Respondent at its Oswego, New York facility; excluding confidential employees, guards, registered nurses, graduate registered nurses, and all other professional employees and unit managers, and all other supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

<sup>3</sup> The Respondent's requests that the amended complaint be dismissed and that it recover costs and attorneys' fees are therefore denied.

Member Schaumber did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

### B. Refusal to Bargain

Since on or about September 28, 2004, the Union has requested the Respondent to bargain and to furnish information, and, since on or about October 18, 2004, the Respondent has failed and refused. We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after October 18, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Pontiac Nursing Home, LLC, Oswego, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with 1199 New York's Health and Human Service Union, SEIU, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time licensed practical nurses, graduate practical nurses, certified nurse assistants, recreation aides, unit clerks, receptionists, unit aides, bakers, dietary aides, cooks, maintenance/grounds employees, housekeepers and laundry employees employed by the Respondent at its Oswego, New York facility; excluding confidential employees, guards, registered nurses, graduate registered nurses, and all other professional employees and unit managers, and all other supervisors as defined in the Act, and all other employees.

(b) Furnish the Union with the information listed as "Bargaining Unit Information" items 1-14 in the Union's letter dated September 28, 2004.

(c) Within 14 days after service by the Region, post at its facility in Oswego, New York, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 18, 2004.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. February 28, 2005

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with 1199 New York's Health and Human Service Union, SEIU, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time licensed practical nurses, graduate practical nurses, certified nurse assistants, recreation aides, unit clerks, receptionists, unit aides, bakers, dietary aides, cooks, maintenance/grounds employees, housekeepers and laundry employees employed by us at our Oswego, New York facility; excluding confidential employees, guards, registered nurses, graduate registered nurses, and all other professional employees and unit managers, and all other supervisors as defined in the Act, and all other employees.

WE WILL furnish the Union with the information listed as "Bargaining Unit Information" items 1-14 in the Union's letter dated September 28, 2004.

PONTIAC NURSING HOME, LLC